



January 31, 2003

Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: Comments in Docket CG 02-278

Dear Ms. Dortch:

The Small Business Survival Committee ("SBSC") appreciates the opportunity to submit comments to the Federal Communications Commission ("FCC") regarding the Telephone Consumer Protection Act ("TCPA"). SBSC is a nonpartisan, nonprofit small business advocacy organization with 70,000 members across the country.

SBSC writes today as small businesses face the dire prospect of two contradictory and overlapping sets of federal regulations regarding a national "do not call (DNC) list" – one issued by the FCC and another issued by the Federal Trade Commission ("FTC"). This comes on top of what may be (depending on which state is involved) an already existing onerous state DNC regulations.

Small businesses (those with fewer than 20 employees) make up over 90% of all businesses in the U.S.. Small business is the engine of economic growth in the United States and each additional regulatory burden imposed upon it drains more and more power from that engine. The Office of Advocacy of the Small Business Administration reports that companies with fewer than 20 employees already spend 60% more per employee than companies with more than 500 employees to comply with federal regulations.<sup>1</sup> Adding two more agencies with contradictory and overlapping DNC regulations will only drive the regulatory cost for small businesses higher.

The FCC has the explicit statutory authority to create a single national do-not-call ("DNC") list pursuant to the TCPA. Under the TCPA, the FCC should craft regulations that will

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<sup>1</sup> W. Mark Crain & Thomas D. Hopkins, *The Impact of Regulatory Costs on Small Firms: A Report For The Office of Advocacy, U. S. Small Business Administration* (2001) available at <http://www.sba.gov/advo/research/rs207tot.pdf>.

apply to all telephone solicitations. Although it is not clear how conflicting rules will be resolved, the FCC must follow the mandates of the TCPA. The TCPA explicitly recognizes the importance of protecting small business in several ways. SBSC urges the Commission to heed these provisions as it contemplates structuring its DNC list.

The FTC, in its notice of proposed rulemaking for charging user fees, suggested that it would provide a certain number of area codes free of charge as a means of lessening the burden on small business. While somewhat helpful to small business, it does nothing to alleviate the tremendous expense and burden of using the list – not to mention the financial impact of losing perspective customers.

While SBSC remains opposed to the formation of a national DNC list, we would like to offer recommendations that would make such a list less onerous for small businesses.

First, the Commission can choose whether local calls, particularly those made by small business, should even be subject to the DNC list requirement.<sup>2</sup> From caterers to accountants to photographers, local businesses operate as part of the fabric of the community. Those small businesses usually do not buy large computerized lists or use predictive dialers. They may receive a referral from a friend or colleague, read the local newspaper, or simply see a new family move in. Aside from the cost of purchasing a DNC list (discussed more fully below), simply trying to look these numbers up on a list would be expensive and time-consuming.

Many people, even those who may prefer not to receive calls from national telemarketers, do welcome calls from local small businesses. The hallmark of small business is the fact that the transaction often will be closed with a handshake – not by reading a credit card number and expiration date into a phone. Small businesses can comply with a request not to be called again if a prospect so requests.

To avoid placing an undue burden on small business, SBSC requests that the Commission exercise its authority under subsection (c)(1)(C) of the TCPA and exempt local calls. One of the hallmarks of a local call is that the transaction will often be closed with a face-to-face meeting. SBSC therefore proposes that the FCC exempt calls that are made to schedule a face-to-face meeting under its authority to exempt local calls.

The FTC refused to include a face-to-face exemption to its list, but the TSR applies only to interstate calls. Because the TCPA applies to intrastate calls as well, the FCC must carefully craft its rules to provide maximum protection for small businesses that conduct business with a face-to-face meeting. Although subsection (c)(1)(C) refers to “local telephone solicitations, such as local solicitation of small businesses,” SBSC believes that a workable exemption should be for calls that result in a face-to-face meeting.

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<sup>2</sup> 47 U.S.C. §227(c)(1)(C).

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A face-to-face approach avoids another problem: enforcement and complaints. If a small business calls a person on the DNC list and requests a face-to-face meeting, that person will know instantly that the caller has a right to make the call.

Subsection (c)(4) of the TCPA requires the FCC to consider local marketers and small businesses when implementing the list and charging for the list. By exempting local calls that result in a face-to-face transaction, the FCC can avoid making these difficult decisions that will only marginally impact small business anyway.

In sum, the FCC must exercise extreme caution to make certain that it does not unduly burden small business as it considers implementing a DNC list.. The FCC is the proper agency to develop a national list and address these concerns. SBSC suggests that one way to do this is through an exemption for calls that result in a face-to-face transaction.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Darrell McKigney", with a stylized flourish at the end.

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cc: Thomas M. Sullivan, Esq.  
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